

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
BLUEFIELD

GRANT THORNTON, LLP,

Plaintiff,

v.

CIVIL ACTION NO. 1:00-0655

FEDERAL DEPOSIT INSURANCE
CORPORATION,

Defendant;

and

FEDERAL DEPOSIT INSURANCE
CORPORATION,

Plaintiff,

v.

CIVIL ACTION NO. 1:03-2129

GRANT THORNTON, LLP,

Defendant;

and

GARY ELLIS,

Plaintiff,

v.

CIVIL ACTION NO. 1:04-0043

GRANT THORNTON, LLP,

Defendant.

MEMORANDUM OPINION

By Order entered September 29, 2005, the court GRANTED 1) the FDIC's Motion to Exclude the Expert Testimony of Tom Skerl (doc. # 464); and 2) the FDIC's Motion to Reopen Evidence for Limited Purpose of Correcting and Submitting Additional Deposition Excerpts (doc. # 486).

As to the motion regarding Mr. Skerl, the court did not

permit him to testify as an expert witness because he was never designated as an expert witness, did not provide an expert report, did not give an expert deposition, etc. However, as the court indicated at trial, it has admitted Mr. Skerl's testimony to the extent that he testified as a fact witness. The court has simply disregarded any testimony that crosses the line into expert testimony.

The court granted the second motion because it felt that the equities involved should allow the FDIC to reopen the record given the voluminous nature of the exhibits that were admitted in this case. Deposition designations were made for the convenience of the court and a party should not be penalized for failing to designate a relatively small amount of deposition testimony for innocent reasons. However, after reviewing the additional deposition excerpts, the court has disregarded them in making its forthcoming Findings of Fact and Conclusions of Law because they do not aid the court in its decisional process.

The Clerk is directed to send a copy of this Memorandum Opinion to counsel of record.

IT IS SO ORDERED this 8th day of March, 2007.

ENTER:

A handwritten signature in cursive script, reading "David A. Faber", is written over a horizontal line.

David A. Faber
Chief Judge